

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-21-C - ORDER NO. 2001-367

APRIL 24, 2001

IN RE: Application of American Fiber Network, Inc.)	ORDER GRANTING
for a Certificate of Public Convenience and)	CERTIFICATE
Necessity to Provide Intrastate Resold and)	
Local Exchange Telecommunications)	
Services within the State of South Carolina.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the application of American Fiber Network ("AFN" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company's application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2000) and §58-9-520 (Supp. 2000) and the rules and regulations of the Public Service Commission of South Carolina.

By letter, the Commission's Executive Director instructed AFN to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. AFN complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on February 23, 2001. Thereafter, on March 1, 2001, Counsel for SCTC filed

with the Commission a Stipulation in which AFN stipulated that it would only seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent’s service area, unless and until AFN provided written notice of its intent prior to the date of the intended service. AFN also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. AFN agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to AFN provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on March 29, 2001, at 10:30 a.m., in the Commission’s Hearing Room. The Honorable William Saunders, Chairman, presided. John J. Pringle, Jr., Esquire, represented the Company. Robert Heath, Executive Vice President of AFN, appeared and testified on behalf of the Company. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff. Eddie Coates, Rates Analyst, and Andreas J. Corley, Auditor, presented testimony on behalf of the Commission Staff.

Heath’s responsibilities as Executive Vice President of AFN include overseeing AFN’s expansion into new markets and new services. Additionally, he oversees all state and federal regulatory activities and all interconnection issues with incumbent local exchange carriers. Heath had telecommunications experience prior to joining AFN.

Prior to joining AFN, Heath was a founder and principal in Valence Communications, a competitive local exchange carrier and interexchange carrier based in Texas. Heath was also previously employed with Heath Telecom Resources, a telecommunications and consultant service provider; Fone America, Inc., and ITI (now known as Oncor Communications, Inc.).

AFN seeks to provide a full range of local exchange and interexchange (including interLATA and intraLATA) and switched and special access telecommunications services throughout the State of South Carolina. The Company intends to provide a wide array of communications services, principally to hospitality locations, resort & condominium facilities, and other multi-dwelling units. The record reveals AFN does not intend to offer a debit or prepaid calling card immediately after receiving certification; however, the Company is aware that should AFN plan to offer such a service in the future, the appropriate bond/certificate of deposit will be filed with the Commission.

Heath also addressed AFN's technical, financial, and managerial ability to offer telecommunications services in South Carolina. The testimony reveals AFN has raised sufficient capital to provide service in South Carolina and in other markets. Additionally, AFN will raise additional capital as necessary to fund its ongoing operations.

Douglas Bethell is President and Chief Executive Officer of AFN. According to the record, Bethell has ten years of experience in telecommunications. Prior to forming AFN in 1991, Bethell served as Regional Vice President of Sales for One Plus Communications, Inc. Bill Stark has served as the Company's Director of Information Services since 1996. Stark has over fifteen years of experience in computer technology

and information systems. Prior to joining AFN, Stark served as President of BITE Computing, Inc., an innovative computer consulting firm based in Overland Park, Kansas. According to the record, AFN will seek to recruit and retain additional technical, operational and sales personnel with experience in the local exchange and long distance businesses.

The testimony also reveals AFN will be using Global Crossing and Verizon as its underlying interexchange carriers in South Carolina. Additionally, the Company plans to negotiate an interconnection agreement with BellSouth Telecommunications, Inc. and Verizon. Bethell and Heath market AFN's services to potential customers. The testimony also reveals AFN will not utilize telemarketing or other marketing methods that are likely to result in "slamming". AFN will bill its South Carolina customers directly. AFN also operates a customer service center from 8:30 a.m. to 6:00 p.m. central standard time, Monday through Friday. The Company also has a voice mail option with paging capabilities available twenty-four hours a day, seven days a week, as well as an email option for customer service.

Corley reviewed several of AFN's financial statements. The financial statements dated December 31, 1999, indicate that cash made up 19% of the Applicant's total assets and retained earnings were positive. Corley next reviewed the unaudited financial statements dated January 1, 2000, through September 30, 2000. During this period, cash made up 43% of total assets and the current ratio was .57. Long-term debt was 9% of total liabilities and equity and the Company continued to show a profit from operations. Finally, Corley reviewed the Company's financial statements dated December 31, 2000.

As of December 2000, cash made up 14% of the AFN's total assets. Additionally, the current ratio was .93 and long-term debt was 60% of total liabilities and equity. AFN continued to show a profit from operations. Corley concluded by stating AFN is in a fair financial position; he opined that the Company will need to continue to earn profits each year or receive additional sources of capital from stockholders.

Coates testified that he reviewed the Company's proposed tariff to ensure that the tariff complied with the Commission's Rules, Regulations, and Orders. Coates' Exhibit EC-1 includes his recommended changes to the Company's tariff so that the tariff is in compliance with the Commission's Regulations and Orders. Heath agreed to make the changes to the Company's tariff as recommended by Coates. Coates also requested that the Company file separate tariffs for its intrastate resold local exchange and interexchange telecommunications services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. AFN is organized as a corporation under the laws of the State of Delaware and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

2. AFN wishes to provide local exchange services and interexchange services within the State of South Carolina.

3. The Commission finds that AFN possesses the technical, financial, and managerial resources sufficient to provide the service requested.

4. The Commission finds that AFN's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 2000).

5. The Commission finds that AFN will support universally available telephone service at affordable rates.

6. The Commission finds that AFN will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by AFN "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 2000).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to AFN to provide competitive resold and facilities-based intrastate local exchange services only to customers located in the non-rural areas of South Carolina. The terms of the Stipulation between AFN and the SCTC are approved, and adopted as a portion of this Order. Any proposal to provide local exchange service to a customer in a rural incumbent LEC's service area is not included in the instant grant of authority. Further, the Company is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate

Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to the interexchange service offerings of AFN, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. AFN shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. AFN shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 6, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2000).

4. If it has not already done so by the date of issuance of this Order, AFN shall file its revised long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The Company shall file its revised local tariff prior to commencement of operations within South Carolina. The revised tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. AFN is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. AFN shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If AFN changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, AFN shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

9. AFN shall file annual surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of the forms which the Company shall utilize to file annual surveillance reports with the Commission is "Annual Information on South Carolina Operations For Interexchange Companies and AOS".

10. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs AFN to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, AFN, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has

its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. AFN shall file with the Commission the names, addresses, and telephone numbers of those representatives within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. AFN shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. AFN shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, AFN shall keep financial records on an intrastate basis for South Carolina to comply with the annual and gross receipts filings. The "Annual Report for Competitive Local Exchange Carriers" form can be located at the Commission's website at www.psc.state.sc.us/forms.

This form shall be utilized by the Company to file annual financial information with the Commission. Pursuant to the Commission's regulations, the Company shall file a CLEC Service Quality Quarterly Report with the Commission. The proper form for this report is Form #110 and can be found at www.psc.state.sc.us/forms/default.htm.

14. By its Application, AFN requested waivers from Commission requirements (1) of publishing a directory (the Company will arrange with the appropriate ILEC in its interconnection agreement for the publication of AFN's customers names, addresses, and telephone numbers); (2) of maintaining its books and records required by the Commission rules within the State of South Carolina (the Company seeks to keep these books and records at its principal place of business in Kansas); and (3) of any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (AFN keeps its financial records in accordance with the Generally Accepted Accounting Principles). The Commission finds the reasoning behind AFN's requests for waivers of publishing a directory, maintaining its books and records in conformance with the Uniform System of Accounts, and maintaining its records required under the Commission's rules within the State reasonable and hereby grant the waivers of these regulations. AFN is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. As AFN proposes to provide operator services in aggregator locations, AFN shall comply with the following conditions:

- (a) For intrastate 0+ operator assisted and calling card calls originating from pay telephones outside confinement facilities and at aggregator locations, AFN may not impose operator service charges greater than the intrastate charges then currently approved for AT&T. For the usage portion of the call, AFN may not charge more on interLATA calls than the intrastate interLATA rates charged by AT&T Communications for interLATA calls or on intraLATA calls than the intraLATA rates charged by BellSouth Telecommunications for intraLATA calls.
- (b) AFN is allowed to incorporate in its tariff a surcharge (property imposed fee) on operator- assisted and calling card calls not to exceed \$1.00 for calls originating from payphone (excluding pay telephones associated with inmate calling service) and from aggregator locations, only if the property owner has not added a surcharge already. That is, AFN may not impose an additional surcharge to calls originating from pay telephones and from aggregator locations if a property owner has already imposed such a surcharge. If such surcharge is applied by AFN on behalf of the property owner, AFN is directed to pay the surcharge in its entirety to property owner. Further, if the surcharge is applied, the end user should be notified of imposition of the surcharge. This notification should be included in the information pieces identifying AFN as the operator service provider at that location.

- (c) AFN is required to provide information pieces to pay telephone service providers or property owners identifying AFN as the provider of the operator service for authorized calls originating from the location. AFN is required to brand all calls identifying itself as the carrier. The information shall be consistent with the format approved by the Commission in Order No. 93-811, issued in Docket No. 92-557-C.
- (d) Regarding the provision of operator services, AFN shall comply with the Operator Service Provider Guidelines approved in Order No. 93-534, issued in Docket No. 93-026-C.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2001-21-C

Re: Application of American Fiber Network, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local and Interexchange)
Telecommunications Services in the State of)
South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and American Fiber Network, Inc. ("American Fiber Network") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose American Fiber Network's Application. SCTC and American Fiber Network stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to American Fiber Network, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. American Fiber Network stipulates and agrees that any Certificate which may be granted will authorize American Fiber Network to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. American Fiber Network stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. American Fiber Network stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's

service area, unless and until American Fiber Network provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, American Fiber Network acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. American Fiber Network stipulates and agrees that, if American Fiber Network gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then American Fiber Network will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. American Fiber Network acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and American Fiber Network, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. American Fiber Network agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. American Fiber Network hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 1st day of March,
2001.

American Fiber Network, Inc.:

John Q. Bringle, Jr.

South Carolina Telephone Coalition:

Margaret M. Fox
M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

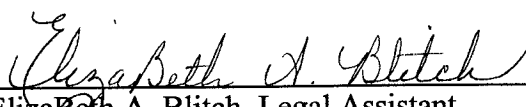
Docket No. 2001-21-C

Re: Application of American Fiber Network, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local and Interexchange)
Telecommunications Services in the State of)
South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

John J. Pringle, Jr., Esquire
Beach Law Firm, P.A.
Post Office Box 11547
Columbia, South Carolina 29211-1547


ElizaBeth A. Blitch, Legal Assistant
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

March 1, 2001

Columbia, South Carolina